IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 10/01/2013

DATED: 23/04/2013

CORAM

THE HONOURABLE **MR.JUSTICE C.S.KARNAN**

W.P.No.929 of 2004 and
W.P.M.P.No.926 of 2004

1.S.Selvarajan
2.S.Bharathan
3.P.Thangavel
4.A.Thirumalganesan
5.P.Muniyandi ... Petitioners

vs.

1.The Deputy Registrar of Co-operative Societies,
Arrupukottai, Virudhunagar District.

2.The Special Officer,
SP.Spl.160, Sree Ayyanar Spinning and Weaving Mills Employees Co-operative Thrift & Credit Society,
Mallanginar-626 109. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records of the first respondent in his surcharge proceedings No.Tha.Va.15/2002-2003/Sa.Pa., dated 26.08.2003 and quash the same in sofar as the petitioners are concerned.

For Petitioners : Mr.S.Kalimuthu
for Mr.N.Umapathi

For Respondents : M/s.T.P.Savitha
Government Advocate (Co-op.)

* * * * *

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorari to quash the surcharge proceedings, dated 26.08.2003, initiated by the first respondent.

2. The short facts of the case are as follows:

The petitioners submit that they are the members of the second respondent Society. They were elected as the members of the Board of Directors of the second respondent Society. They continued as the members of the Board from 11.11.1997 till the Society was superseded by the Special Officer and the second respondent Society is now managed by the Special Officer.

3. After assumption of charge by the petitioners as members of the Board, the business turnover and the profit rate of the second respondent Society were increasing from year to year.

Hence, in order to provide quick and efficient service to the members of the Society, the Board of Directors appointed sufficient employees in the second respondent Society. In such circumstances, the first respondent issued an order, dated 26.04.2002, for inspection of the second respondent Society, under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as 'the Act'), and accordingly the Inspection Officer conducted an inspection in the matter of appointment of employees and payment of wages to them and filed his report to the first respondent. The first respondent, based on the inspection report, initiated surcharge proceedings against the petitioners under Section 87(1) of the Act, by issuing surcharge notice, dated 06.01.2003. On the final hearing of the surcharge proceedings, the petitioners filed their explanation stating that they are not responsible for the alleged loss and denied the charges. However, without considering the explanations submitted by them, the first respondent passed the impugned order, dated 26.08.2003, holding that all the petitioners are jointly and severally liable to pay a sum of Rs.57,587/- to the second respondent Society.

4. The petitioners further submit that the allegation against them was that the then Board, in which they were members, had appointed one Vijayalakshmi against the rules and Act and thereby caused financial loss of Rs.57,587/- as salary paid to her. The said Vijayalakshmi filed a writ petition in W.P.No.15166 of 2002, before this Court and in the said writ petition, this Court passed orders in her favour and hence, the proceedings against them cannot be continued. Though they have stated in their explanation submitted to the first respondent that they are not responsible for the alleged loss, the first respondent, without rendering any decision on the said issues, passed the impugned order. Where a quasi-judicial authority passes any order without any jurisdiction, his order could be challenged by writ proceedings and that existence of alternative remedy is no bar. Therefore, they have filed this writ petition seeking the relief as stated above.

5. The highly competent counsel Mr.S.Kalimuthu appearing for the petitioners submits that they are the members of the second respondent's society and the petitioners were elected as the members of the Board of Directors of the second respondent

herein. The petitioners continued as the members of the Board of the second respondent's Society from 11.11.1997 till the Society was superseded by the Special Officer and the second respondent Society is now managed by the Special Officer. The first respondent issued a proceedings dated 26.08.2003 holding that all the petitioners are jointly and severally liable to pay a sum of Rs.57,587/- to the second respondent Society, being the loss amount paid as salary to one Mrs.Vijayalakshmi, on her irregular appointment. The petitioners herein and others have filed W.P.No.33466 of 2002 and W.P.No.39927 of 2002, challenging the above said surcharge proceedings on the ground that the first respondent has no authority to pass an order as it is in violation of statutory provisions of Section 81(4) of the Tamil Nadu Co-operative Societies Act. Further, the enquiry was completed after the statutory period. Therefore, the surcharge proceedings is not suitable to be executed against the petitioners. At the time of enquiry, no document was produced by the respondent. Further, the employee Mrs.Vijayalakshmi has filed W.P.No.15166 of 2002 before this Court and this Court was pleased to pass orders in favour of the said employee and the surcharge proceedings cannot be continued. The first respondent, without taking into

consideration of this Court's order, passed the surcharge proceedings. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

6. The highly competent Government Advocate Ms.T.P.Savitha appearing for the respondents submits that the petitioners had appointed one Mrs.Vijayalakshmi and paid salary to her and as such, the petitioners had caused loss to the tune of Rs.57,587/- since the appointment made by the petitioners was irregular. The first respondent had issued a notice to all the directors of the Board and 2 of the Directors appeared and submitted their explanation. On the basis of the reply submitted by the two directors and on the basis of documentary proof, the surcharge proceedings had been initiated.

7. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the impugned order of the first respondent, this Court is of the view that the Board of Directors had passed Resolution No.2, dated 02.08.1998, and appointed Mrs.M.Vijayalakshmi and she had worked with the second

respondent Society till June 2002. As such, after a lapse of 4 years, surcharge proceedings should not be initiated since the action of the respondents have been done at a belated stage. Therefore, the above writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

23.04.2013
(3/3)

Index : Yes.
Internet : Yes.

r n s

C.S.KARNAN, J.
r n s

To:

1.The Deputy Registrar of Co-operative
Societies,
Arrupukottai, Virudhunagar District.

2.The Special Officer,
SP.Spl.160, Sree Ayyanar Spinning and
Weaving Mills Employees Co-operative
Thrift & Credit Society,
Mallanginar-626 109.

Pre-Delivery Order in
W.P.No.929 of 2004 and
W.P.M.P.No.926 of 2004

23.04.2013
(3/3)